IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TH SERVICES GROUP, INC., PLAINTIFF	:	CIVIL ACTION
v.	:	NO. 98-CV-4835
INDEPENDENCE BLUE, et al., DEFENDANTS	:	

MEMORANDUM

Giles, C.J. January ___, 2001

I. INTRODUCTION

TH Services Group, Inc. ("TH Services") has brought this action against Independence Blue Cross ("IBC"), Capital Blue Cross ("Capital"), Highmark, Inc. (formerly Blue Cross of Western Pennsylvania) ("Highmark"), and Blue Cross of Northeastern Pennsylvania ("BCNEPA") (collectively "the Blues"), alleging that they each, separately and together, tortiously interfered with actual and prospective contractual relations between TH Services and certain purchasers of health care insurance. It is alleged that TH Services reasonably expected to be engaged to audit those Blues on behalf of such customers. TH Services has identified those customers as the Pennsylvania Employee Benefit Trust Fund ("PEBTF"), the Delaware Valley Health Care Coalition ("Coalition"), the Delaware County Schools Affiliation ("Affiliation"), and the School District of Philadelphia ("School

District").

Count I of the complaint alleges that all four defendants tortiously interfered with a prospective contractual relationship between TH Services and the PEBTF. Count II, directed only against IBC, alleges that it tortiously interfered with an actual contract between TH Services and the Coalition. Count III, also against IBC only, alleges that it tortiously interfered with prospective contractual relations between TH Services and the Coalition, the Affiliation, and the School District. Count IV alleges a conspiracy among all defendants to interfere generally with TH Services' existing and prospective contractual relations.

Now before the court is each defendant's Motion for Summary Judgment, pursuant to Fed. R. Civ. P. 56(b).[1] For the reasons that follow, each of the motions is granted.

II. UNDISPUTED FACTUAL BACKGROUND

TH Services is a New Jersey health care auditing firm that specializes in identifying erroneous and/or improper charges in billings for health and hospital services administered under health benefits plans, such as those offered by defendants. Through its principals, Raymond DePaola and John DeVirgiliis,

[1]Motions for Summary Judgment had been filed previously by all defendants, in the alternative to Motions to Dismiss, in October 1998 before Judge Robert Gawthrop, now deceased, and were denied as premature. 1999 WL 124408 (E.D. Pa. 1999).

TH Services conducts audits on a contingent fee basis.[2] Defendants are members of the Blue Cross and Blue Shield Association, the largest provider of managed health care services in the United States.

A. The Blues' Respective Audit Policies

1. IBC

Since at least August 1993, IBC has operated under an audit policy entitled "Policy for Audits for Customers and Other External Entities" ("IBC Audit Policy"). It contains the following statement of purpose: "It is the policy of IBC to cooperate fully with external audit/review teams and to provide support to their team members during an audit/review of IBC. . . . IBC will allow audits . . . by independent auditors . . . who are mutually agreeable to IBC and the [customer]. . . . IBC will not allow audits to be conducted by contingency fee auditors/consultants." (August 1993, revised Policy, attached to Park tr. as Def. Exh. A1.)

According to the unrebutted testimony of Rosemary Park, Senior Vice President for Rating and Underwriting of IBC, the IBC Audit Policy is "applied across the board every time there [is]

[2]In oral argument, plaintiff stated that TH Services is capable of providing non-contingent fee audits; however, no evidence was presented that TH Services holds itself out as providing service on that basis.

an external audit irrespective of who asked for it." (Park Tr., Def. Exh. A, at 44.) IBC disseminates the Policy to customers at any time a customer requests an audit to be provided, or at any time that, as part of a negotiated contract, a customer requests the details of the audit policy. (Id.; Butler Tr., Def. Exh. B, at 42.)

2. BCNEPA

Since December 1996, Blue Cross of Northeastern Pennsylvania ("BCNEPA") has had a written policy against contingent fee audits. (Michael Gallagher Dep., BCNEPA Exh., 21-24.) Although there may have been an informal policy against contingency fee auditors prior to that date, (id. at 19), BCNEPA first included a formal written policy to this effect in its December 20, 1996, contract with the PEBTF.[3]

3. Capital and Highmark

Neither Capital nor Highmark has ever had a policy against contingent fee audits, in general, or against TH Services as an auditor, in particular. (Ver. of Michael MacGee ("MacGee Ver."),

[3]That contract contained the following language: "To the extent the PEBTF retains a third party to conduct an audit as described in this Article, the PEBTF agrees that any compensation for auditing services to a third party may not be contingent upon the results of the audit." ("Agreement for Administrative Services," BCNEPA Exh. F, ¶ 1.)

Capital Exh. A, ¶ 11; Elizabeth A. Farbacher Aff., Highmark Exh. A.) There is no evidence that TH Services has sought to be an auditor for any of their customers.

4. IBC and BCNEPA

Neither IBC nor BCNEPA has a policy that excludes TH Services by name or as a non-contingency auditor. Further, there is no evidence that TH Services has sought to be mutually approved by a Blue Cross customer and IBC or BCNEPA as a non-contingency auditor.

B. The PEBTF (Count I)

The PEBTF is a jointly administered labor/management trust fund created in October 1988 for the purpose of providing a full range of healthcare benefits to approximately 85,000 employees of the Commonwealth and their dependents who work under the jurisdiction of the Governor. In addition, the Fund also acts as the third-party administrator for t he delivery of healthcare benefits for 45,000 retirees, annuitants and their dependents. All together, the Fund provides healthcare coverage to approximately 300,000 people.

The Fund grew out of a collective bargaining relationship between the Commonwealth of Pennsylvania and several different unions representing state employees, including American

Federation of State, County, and Municipal Employees (“AFSCME”) Council 13, Pennsylvania Social Services Union (“PSSU”), United Food and Commercial Workers (“UFCW”), the Pennsylvania Nurses Association, and the Federation of State, Cultural & Educational Professionals.

The Fund is governed by an equal number of union and management trustees. Seven Union Trustees are selected by the different unions which maintain a collective bargaining relationship with the Commonwealth and whose members receive medical benefits provided by the Fund. The seven management or Commonwealth Trustees are appointed by and serve at the pleasure of the Governor. The Chairmanship of the Fund rotates over time between the Executive Director of AFSCME, Council 13, the largest of the different unions and the Secretary of Administration of the Commonwealth of Pennsylvania.

The Trust is funded primarily by contributions made by the Commonwealth of Pennsylvania in accordance with its collective bargaining agreements with the various unions.

Prior to the Fund’s creation in October 1988, the Commonwealth of Pennsylvania, through its Office of Administration, administered healthcare benefits for all eligible participants which it secured through a state-wide Operating Agreement with Capital serving as the control plan. With the emergence of the Fund, an interim agreement was reached between

the Fund and the Blues, whereby Capital continued to serve as the Control Plan. Since its creation in October 1988, the PEBTF has had a series of contracts with Capital for the delivery and administration of health benefits to be provided to the Fund's beneficiaries.

At all times pertinent to the claims in Count I, Capital had acted as the "Control Plan," and the other defendants each had acted as a "Participating Plan" for the PEBTF account. (See, e.g., 2/8/00 Gallagher Dep. at 14:19-15:18.) Collectively, the Commonwealth and the PEBTF had contracted with defendants for "30 years or more." (1/30/98 Arb Test. of James Mead at 24:16-26:16.)

In late 1991, the Trustees of the PEBTF expressed the desire to retain the services of someone to conduct a 100% audit of all medical claims administered and paid by it to the Blues since its inception. (Arb. Op. at 10, Pl. Exh. 1.[4]) In prior years, the PEBTF had engaged Deloitte & Touche ("Deloitte") to conduct a random audit of selected healthcare claims submitted to the Blues. Motivated, in part, by a belief expressed by some Trustees that the Blues had been overcharging the Fund, encouraged by the newspaper articles of lawsuits brought against

[4]Plaintiff's exhibits mentioned in this opinion are located in Volumes I and II of plaintiff's appendices to its Memorandum of Law in Support of Its Response to Defendants' Motions For Summary Judgment, numbered consecutively from 1 through 83.

other Blue Cross companies around the nation, and because it was about to engage in negotiations for a new contract with Capital, in February 1992 the PEBTF issued a Request for Proposal ("RFP") to interested contractors requesting auditing proposals and estimates. (Arb. Op. at 10.) The RFP solicited "a program to audit for and recover, if necessary any over-payments to members, hospital, surgical and/or healthcare providers." (Arb. Op. at 10.)

In February 1993, the PEBTF engaged TH Services to perform an audit of the Blues' Plans. (Compl. ¶ 39.) The audit agreement provided that TH Services would be paid advances totaling $150,000.00 to be offset against a contingency payment of twenty percent (20%) of any "refunds, credits, reductions, or any other thing of value" obtained by PEBTF from the Blues due to the auditing services of TH Services.[5] (Compl. ¶ 40.) TH Services was to determine if the PEBTF had obtained all that it was entitled to receive under its contracts.

Subsequently, a dispute arose between the PEBTF and TH Services as to whether the engagement included an audit of hospital/provider discounts for the years 1988 through 1992. This dispute gave rise to an arbitration proceeding, following

[5]The contingent fee payment methodology was adopted at the insistence of the PEBTF, which had required all interested auditing firms to propose such a methodology in their bids for the audit. (Arb. Op. at 10.)

termination of TH Services' contract by the PEBTF.

Under its direct contract with Capital, the PEBTF was entitled to certain group provider discounts on claims paid by the Blues.[6] However, the method of determining the amount of discount varied with each of the Blues, until 1991, when there was an agreement between the PEBTF and Capital that there would be a guaranteed provider discount.

Through the arbitration process it was determined that, at the time they negotiated their audit agreement, both TH Services and the PEBTF were aware of the possibility that the Blues might not voluntarily provide cooperation or documents in all respects necessary for TH services to audit or analyze claims and provider discounts received by the Blues.[7] The PEBTF had received advice that a lawsuit might be needed to obtain the data directly from the Blues.

TH Services represented to the PEBTF that if it were denied documents or cooperation from the Blues, it could use public documents in order to complete the task. (Arb. Op. at 45.)

In response to TH Services' request for data, Capital

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[6]TH Services also conducted an automated claims processing audit, also referred to in the record as a "discrepancy audit," based upon individual claim records maintained by the Fund and the Blues.

[7]It is not clear when, prior to January 1995, the Blues were told unequivocally that the PEBTF was seeking an audit of provider discounts.

reluctantly cooperated with TH Services, eventually providing the information that was within its possession. Capital, being under the impression that an individual claims audit was being sought, stated that its reluctance stemmed in part from the fact that, at the PEBTF's request, an audit had only recently been conducted by Deloitte for the period October 1, 1988, through September 30, 1991. Deloitte had been engaged by the PEBTF to conduct contract compliance audits for each of the first three years of the PEBTF's operations.[8] (Pl. Exh. 23.) When it became clear to the Blues that a 100% claims audit was sought, as opposed to a sample claims audit, and that a hospital/provider discount audit was sought, all of the Blues, except Capital, refused to provide the requested information, apparently taking the position that only the kind of claims audit done by Deloitte was contemplated by the agreement with the PEBTF. (Pl. Exh. 19.)

Because the Blues were not cooperating in providing requested internal documents, TH Services proceeded to use public documents to attempt to accomplish its engagement with the

[8]The accuracy of the Deloitte audit had been challenged by the law firm of Elliott, Bray & Riley, which submitted an audit proposal to the PEBTF through Robert Bray, in his capacity as a principal of the law firm. Mr. Bray stated, "I don't believe that the Deloitte Audit can even begin to be used as even a partial barometer of the amounts here possible, because of my belief that their audit was not performed with any kind of substantial expertise in this most complicated area." (Arb. Op. at 12.)

PEBTF.[9] In order to estimate hospital discounts suspected to have been underestimated by the Blues, TH Services compared the information published by the Pennsylvania Health Care Cost Containment Council ("PCH4")[10] with the Fund's Capital Account Performance ("CAP") reports for 1989 and 1990 containing financial cost information from the Blues. (Arb. Op. at 17.) Based upon its analytical methods, TH Services extrapolated that defendants had overcharged the PEBTF by at least $70 million over the term of the audit period of four years, from 1988 through 1992. (Compl. ¶ 39, Pl. Exh. 35.) Roughly $57 million of this amount was believed to be improperly withheld provider discounts. The largest portion of that amount was attributed to IBC. Capital and Highmark were not attributed any discount discrepancy. (Pl. Exh. 35.) While TH Services appreciated that its audit was not an analysis of the Blues' books, it believed that its methodology was sufficiently sound to be the basis of a demand upon the Blues for full restitution and, in the absence of

[9]Much of the data requested by TH Services for the PEBTF audit had to be obtained from IBC, Capital's subcontractor. IBC has been granted the exclusive license for use of the Blue Cross name and Service Mark within its service area, which includes, among other places, the greater Philadelphia metropolitan area. (IBC Answer ¶ 9.)

[10]The PCH4 was created by statute. See 35 P.S. § 449.1 et. seq. The statute required hospital providers and health care entities such as the Blues to provide specific financial information to the Council, including charges of the facilities and actual payments. See 35 P.S. § 449.6(13) and (14). (Arb. Op. at 17 n. 8.)

payment, a lawsuit. In December 1994, the PEBTF made demand upon Capital and the Blues for payment, and threatened litigation in the absence thereof. Capital and the Blues were adamant that no provider discounts were owed, and that TH Services' use of the PCH4 and CAP reports was fundamentally flawed. Among other things, the Blues pointed to the January 1, 1991, agreement, which guaranteed certain amounts of pass-through discounts to the PEBTF. The Blues insisted that they had fulfilled their contracts with the PEBTF in all respects, and were prepared to litigate. The Blues also indicated that they may not be available to be contracting parties with the PEBTF when the current contract ended.[11]

Prior to the change of administration, the two sides were on the brink of a lawsuit, and the PEBTF had to contemplate the possibility of obtaining other health care insurers on short notice.

In January 1995, when Governor Thomas Ridge assumed office, he appointed seven new management/Commonwealth Trustees, including Secretary of Administration, Thomas Paese. Between January 15 and 31, 1995, a series of meetings took place between Secretary Paese, other PEBTF Trustees, and James Mead, President

[11]Based upon the arbitration record, it is apparent that there was a fundamental difference of understanding of "plan-wide provider discount," as between TH Services on the one hand and the Blues on the other. (DePaola dep. at 19-22, Pl. Exh. 21.)

of Capital concerning the dispute between the PEBTF and the Blues. In those meetings, despite the knowledge that TH Services' analysis was not an audit of the Blues, and that the issue of liability was uncertain, the PEBTF reiterated, based upon TH Services' work product, that the Blues owed $70 million, and that if litigation was necessary, it would be pursued. The Blues, on the other hand, adamantly and consistently asserted that no money was due for discounts, and it would defend vigorously its interests in any lawsuit.

Paese testified at the arbitration that Blue Cross at one point had sent a "huge packet of information to us from lawyers that they had in New Jersey, arguing that under the contracts we were not entitled to the discount." (Paese dep. at 25, Pl. Exh. 36.) The PEBTF legal team may have prepared a rejoinder to the Blues' legal position, (Paese dep. at 21, Pl. Exh. 37 ("Paese dep. II")), but the question of what was legally due under the contracts, as a pass-through of provider discounts was in considerable dispute, and the PEBTF had not been guaranteed by its advisors that a courtroom victory was assured or would be swift.

At some point in early 1995, the PEBTF and Capital decided that settlement efforts were more practical than the prospects of prolonged litigation and possible injury to the commercial relationship between the PEBTF and the Blues. As Paese stated,

"I was concerned that if we filed an immediate lawsuit against the Blues, there was a risk they could cancel coverage for our people." (Paese dep. at 18.) The complaint prepared for the PEBTF for purposes of litigation, according to Paese, risked permanent damage of the relationship between the PEBTF and the Blues, if filed. "I think it was a bombshell. To file this complaint alleging, among other things, RICO against Blue Cross and calling them a corrupt organization before we had an opportunity to conduct a fair audit that they would agree to, I did not agree with that style of proceeding, and that's the reason we attempted to get an auditing firm in the middle to move discussions along to settle the matter, and that's what we did." (Paese dep. at 90-91.)

The PEBTF suggested that it and the Blues "agree to disagree," that is, to determine through an audit the universe of possible financial exposure, without attempting to determine legal liability, and with the view towards trying to reach an amicable resolution. (Arb. Op. at 28.) The PEBTF entered into a tolling agreement with the Blues to stop the statute of limitations for causes of action that might have accrued when the hospital discounts were not passed on to the PEBTF, to give the parties an opportunity to accomplish an audit and try to resolve

the matter without litigation.[12] (Paese dep. at 19.)

According to Paese, he recommended TH Services to be the "neutral auditor." However, as the arbitrator found, because TH Services had already conducted an audit and there was a contingent fee arrangement between the PEBTF and TH Services, the Blues refused to consider that possibility. (Arb. Op. at 29 n.12.) The PEBTF had already threatened a lawsuit that was premised upon TH Services' determination that its calculations were correct.

TH Services had become identified, in the perceptions of both the PEBTF Trustees and Capital and IBC officers, as a strong proponent of litigation, as opposed to settlement, and as a prospective witness in the proposed litigation. (Pl. Exhs. 35, 24.) According to Mead, "TH Services developed the information that was at the heart of the dispute . . . . I think they were part of the dispute. So I do not recall saying they could not be involved in the resolution of the dispute, but I'm not sure how that could be effectuated." (Mead dep. at 38-39, Pl. Exh. 25.) According to Paese, the Blues "were more of the mind-set of having an independent auditor, auditing firm, conduct the audit," and TH Services, because of it was already retained solely by the PEBTF, was not acceptable to them. (Paese dep. at 20.)

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[12]A tolling agreement had been suggested by the Trustees of the previous PEBTF administration but had been rejected by the Blues at that time. (Arb. Op. at 26.)

Similarly, during settlement negotiations, when the PEBTF raised the possibility of using Siegel & Company as the independent auditor, the Blues rejected that selection because they were already associated with the PEBTF. (Paese dep. at 98-99.) Further, because they were paying for part of the audit and were parties to the engagement, Capital and the other defendants proffer, the Plans felt justified in helping to choose the auditor. (MacGee Ver. ¶ 8.)

On January 31, 1995, the PEBTF and the Blues executed a written Tolling Agreement, which called for a cessation of the statute of limitations on all claims stemming from the provider discount issue, and "mutual consent to an objective audit" of records pertaining to the discount issue. (Pl. Exh. 38.) It further provided that any audit undertaken to resolve the dispute would be "undertaken with the imposition of confidentiality restrictions and will be for settlement purposes only, unless all parties agree that the results may be used in a court of law or before some other adjudicative body." (Pl. Exh. 38.) It was understood that the PEBTF would be able to engage a separate auditor if litigation was necessary, and to use that second audit in litigation. (Paese dep. at 23-24.)

In August 1995, the Blues and the PEBTF jointly retained the accounting firm of Coopers & Lybrand to perform an independent

audit, without determining issues of legal liability.[13]

On September 7, 1995, the PEBTF and Capital executed an Addendum to their Tolling Agreement. The Addendum provided, in part:

> Notwithstanding the foregoing, it is expressly agreed by the parties that Confidential Information as defined herein shall not be disclosed in any manner to TH Services Group, Inc. or any of its employees, agents or principals, including but not limited to Raymond DePaola and John DiVirgiliis.

(Tolling Agreement ¶ 6(b), Arb. Op. at 33.)

In February 1996, with full information and cooperation from the Blues, Coopers & Lybrand concluded that there was $70-80 million of possible pass-through provider discount liability owed by the Blues to the PEBTF, without regard to issues of liability arising from the contract language. The Blues continued to take the position that, under the contract, there was no liability. The parties were headed towards litigation, when the PEBTF suggested to Capital a settlement approach of roughly half of Coopers and Lybrand's estimate of possible exposure, because there were pros and cons to all positions. (Paese dep. at 28.) This overture prompted a series of discussions that eventually led to overall settlements of all former disputes between the PEBTF and each of the Blues.

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[13]Neither TH Services nor Coopers & Lybrand ever determined whether the Blues complied with the contract terms. (Pl. Exh. 43.)

On or about December 20, 1996, defendants and the PEBTF entered into a series of confidential agreements under which defendants agreed to pay the PEBTF $36,500,000.00 in settlement, inter alia, of all disputes arising from the claim of failure to pass provider discounts on to the PEBTF. The Blues, however, in doing so, specifically did not concede legal liability for any amount of provider discount.

The Blues contended, in the arbitration proceeding, that the settlement was for business interests and not because of legal liability. For example, Capital contributed $10 million even though, under TH Services' analysis, it had no liability. (Pl. Exh. 35.) Capital's contract with the PEBTF expired at the end of 1996, and, according to Paese, satisfactory resolution of the discount issue had become entangled with negotiations for contract renewal. (Paese dep. at 29; Paese dep. II at 23-24.) "We were at a period late in the year when we simply had to have new contracts with the Blues in order to provide healthcare services for in excess of 200,000 people across the commonwealth through the PEBTF." (Paese dep. II at 19.) For that reason, among others, dealing with the inherent uncertainty of litigation and the PEBTF's waning confidence on the issue of proving liability, the parties settled for an approximate "split" of the PEBTF's original demand of $70 million. (Paese dep. II at 19-20; Paese dep. at 28.)

Pursuant to the settlement agreements, Capital, IBC, and Highmark made payments to the Fund totaling $10 million each, and BCNEPA made payments totaling $6.5 million. (Arb. Op. at 37-38.) The settlement agreements also provided that the PEBTF would enter into a series of long-term direct contracts with each of the defendants for the continued provision of health and hospitals services through 1997, 1998, and 1999. (Compl. ¶ 52.)

The PEBTF did not tell TH Services of these settlements and adopted the position that it had never retained TH Services to conduct an audit of provider discounts, as opposed to an audit of individual claims.

When it discovered the fact of settlement, TH Services demanded its contract percentage based on its work on the provider discount issue. The PEBTF took the position that, in reaching the settlements, it had relied upon Coopers and Lybrand's audit and that TH Services had not performed an audit but had done only a review and analysis of the discount issue. As PEBTF Chairman Edward J. Keller had written to DeVirgiliis in a September 11, 1996, letter, "Because TH Services Group did not perform any discount audits, it is our position that no funds or credits are owed to TH Services Group as a result of any discount audits performed by any other company, if and when any recoveries may be made." (Arb. Op. at 35.)

TH Services submitted a claim for fees to the American

Arbitration Association. Among the defenses asserted by the PEBTF to the claim was that TH Services was guilty of fraud in the inducement. (Arb. Op. at 40.) On August 10, 1998, the arbitrator rejected all of the PEBTF defenses, found that the PEBTF had breached its contract with TH Services, and awarded TH Services its full twenty percent (20%) fee for all amounts paid to the PEBTF under the terms of its settlement agreements with defendants. The total amount awarded to TH Services exceeds $7,000,000.00. (Compl. ¶¶ 54-55.)

Plaintiff, nevertheless, contends that it would have had additional contractual relations with the PEBTF, but for defendants' interference with prospective business relations with the PEBTF, particularly through the adoption by defendants of policies excluding contingent fee auditors.

Nothing in the auditing agreement language between TH Services and the PEBTF promised any further contractual relationship with the PEBTF after the completion of TH Services' audit. Since the settlement with the Blues, the PEBTF has not requested the services of TH Services or of any auditing organization.[14]

[14]No customer of Capital has requested that Capital permit an audit by TH Services. (11/5/98 Ver. of Vincent Fogarty ("Fogarty Ver."), Capital Exh. P ¶ 6.)

C. The Delaware Valley Health Care Coalition (Count II)

The Delaware Valley Health Care Coalition ("Coalition"), incorporated in June 1995, is a voluntary association of separate health and welfare funds, primarily in the building trades, established for the purpose of trying to control and reduce health care costs for its members through large, discount purchases of health and hospital care services. Coalition members contracted with IBC for the provision of such services.

In November 1996, TH Services entered into a written master agreement ("Coalition Agreement") with the Coalition to perform discrepancy audits of Coalition members' claims on a contingent fee basis. The purpose of this "master" agreement was to govern the relationship between TH Services and any Coalition member, if and when it hired TH Services. According to the president of the Coalition, James Buckley, the decision whether or not to use TH Services was committed to the discretion of the independent boards of trustees of each member of the Coalition. (Buckley Tr., IBC Exh. E, at 58-59.) The "master" agreement did not bind a member unless it signed the agreement.

After executing the Coalition Agreement, Buckley and TH Services attempted to negotiate an agreement with Plumbers Union Local 690 ("Plumbers"). This was a separate health and welfare fund for whose separate administration Buckley was also responsible. (Buckley Dep., Pl. Exh. 56, at 133-34.) Prior to

finalization of a contractual undertaking, TH Services began preliminary analysis of the Plumbers' health care claims data, including an examination of its contract with IBC. In May 1997, shortly after this process began, Donna Boyer, the Director of Health and Welfare Funds for IBC, sent Buckley a letter, following up on a meeting in the previous week. The letter contained a copy of IBC's administrative procedure for audits. Neither the policy nor the letter mentioned TH Services. (Letter dated May 8, 1997, from Boyer to Buckley, Pl. Exh. 61.) Ultimately, the Plumbers decided not to enter into a contingent fee Coalition agreement with TH Services. (Buckley Tr., IBC Exh. E, at 176-77.)

According to Buckley, the Plumbers concluded on its own that a contingency fee arrangement would undermine its autonomy. (Buckley Tr., IBC Exh. E, at 196-97.) The Coalition Agreement had provided that the "Trustees as fiduciaries are obliged to, and agree to seek restitution through applicable negotiations with any given health claim payor or provider of any monies which TH Services believes in good faith to have been improperly paid and to be collectible." (Coalition Agreement Sec. V, Pl. Exh. 58.) Rather than be bound to pursue recovery at TH Services' direction, Buckley testified that the Plumbers chose to make DeVirgiliis its employee, through whom as in-house auditor, the Plumbers succeeded in having autonomous control over its recovery

or restitution decisions.

In negotiating DeVirgiliis' employment agreement, Buckley told DeVirgiliis that:

> I wasn't going to use that [master] contract, I wanted [DeVirgiliis] to work for us as an employee. Therefore, I would be complying with several different points that I wanted – number one, we would control the timing of the audit, and we would control who would do the audit. The cost would be on a weekly payroll payment, we wouldn't be using a contingency basis payment, and we would be using an in-house employee, not an outside consultant, and it would be our own auditor that would do the audit once this information was completed and given back to us. This way Plumbers Local Union 690 Industry Fund and our trustees would be able to have the authority and the autonomy and control of our audit. . . . and we in turn complied with the guidelines that were put forward with Blue Shield/Blue Cross.

(Buckley Tr. at 143-44.)

Plaintiff, however, argues that the real reason for the Plumbers' loss of interest in using TH Services as an auditor stems from the letter from Boyer to Buckley. Plaintiff contends that this letter amounted to interference that, coupled with the Blues' "overwhelming market power," succeeded in scaring Buckley from hiring TH Services.

D. Delaware County School Affiliation

The Delaware County School Affiliation ("Affiliation") is an affiliation of approximately 16 school districts that purchase health care coverage from IBC. In or about June 1996, TH Services contacted the Upper Darby School District ("UDSD"), a

member of the affiliation. Norman Wells, the Affiliation consultant charged with the responsibility of identifying auditors, met with Raymond DePaola of TH Services on December 18, 1996, to discuss the possibility of an audit. (Wells dep. at 51, Pl. Exh. 62.) They met again in late December, and TH Services was invited to make a proposal. (Pl. Exh. 63.) On the way into the presentation, DePaola and John DeVirgiliis encountered several IBC officers who happened to have come to the Affiliation's offices to make an unrelated presentation. Two days later, IBC reminded Susan Owens, Assistant Director for Administrative Services for the Affiliation, in a letter that their policy required a "mutually agreeable third party," and that contingent fee audits are precluded. (Letter dated January 10, 1997, from Schwartz to Owens, Pl. Exh. 67.)

In April 1997, the Affiliation established a subcommittee to assist Wells in reviewing proposals from health care audit companies. It met on April 11, 1997. (Wells. dep. at 106.) Wells prepared a summary of this meeting which included the following summary of reasons not to retain TH Services: "Too small/price/staff level." (Wells dep. at 110.) Wells' summary contained no reference to the IBC audit policy.

Plaintiff contends that the chance encounter between TH Services' and IBC's officers in January 1997 prompted an inappropriate and intimidating response from IBC to the

Affiliation, to the effect that an association with TH Services was not an acceptable prospective contractual relationship. The letter from IBC prompted Owens to send a memo to all Affiliation business administrators and healthcare contact persons, stating that, inter alia, "it is clear that IBC does not want the Affiliation to retain [TH Services] to perform the audit." (Owens memo dated January 16, 1997, Pl. Exh. 68.)

The memo also stated that the Affiliation "knew IBC's reluctance to accept [TH Services] as a claim auditor when we invited them for the January 8th presentation. We proceeded with the presentation, knowing that other groups . . . also want to retain [TH Services] and would like to present a united front to IBC." (Owens memo, Pl. Exh. 68.) The memo concluded with "key issues" on the agenda for the February 5, 1997, Affiliation meeting to discuss the Health Care Claims Audit.

> The key issues we need to discuss include:
> - Does the Affiliation have a serious interest in retaining [TH Services] as its claims auditor? We have not made any commitment to them.
>
> * * *
>
> - Should the affiliation consider a "mutually agreeable party" such as a major accounting firm or employee benefits firm? (Norm Wells is to contact at least two firms before the February 5 meeting and report to us.)
> - Is it possible Affiliation Members could use its own internal auditors to develop some edits to audit claims?

(Id. (emphasis added))

According to Wells, TH Services' overly aggressive

presentation, coupled with the Affiliation's "preference . . . definitely to work on a fee-only basis and not to work on a contingency basis," (Wells dep. at 124, 127), led them not to choose TH Services as auditors.

Plaintiff argues that the meetings between TH Services and the Affiliation constituted a prospective contractual relationship, and that IBC's letter was intended to disrupt, and did disrupt, that relationship. (Compl. ¶ 70.)

E. Philadelphia School District

In late 1996, TH Services entered contract discussions with the Philadelphia School District Health and Welfare Plan ("School District"), which also used IBC's services. At the request of the School District, on a contingent fee basis, TH Services began a review and analysis of the School District's health care claims in December 1996. Because TH Services' work on behalf of the School District had commenced, its principal, DePaola, prepared an authorization letter for signature for Herbert Schectman, the executive director of financial services of the School District, which would put Carol Recupero, IBC's manager of sales, on notice of the audit. Schectman approved the letter and sent it to IBC in February 1997. (Pl. Exh. 52.) Based upon his assessment of TH Services' proposal, Schectman had only to prepare a resolution for the School Board's approval of the audit. Such approval,

according to Schectman, was a foregone conclusion and constituted a mere technicality since every resolution that he had ever prepared for the School Board had been adopted. (Schectman dep. at 42-44, 80-81, Pl. Exh. 50.)

Upon receipt of the letter from the School District, IBC's Recupero took the letter to Robert Sekkes, Marketing Vice President. (Recupero dep. at 22, 36, Pl. Exh. 51.) Sekkes' testified that IBC's Chief Marketing executive informed him that TH Services was a contingent fee auditor. (Sekkes dep. at 33-34, Pl. Exh. 53.) Sekkes then instructed Recupero to have Laurie Dolan, an IBC Senior Account Executive and the client relationship manager for the School District, prepare a letter instructing Schectman that TH Services was not "mutually agreeable." (Sekkes dep. at 30-31, 34, Pl. Exh. 53; letter dated March 4, 1997, from Dolan to Schectman, Pl. Exh. 55.)

Before sending correspondence, Dolan telephoned Schectman. (Schectman dep. at 48-49.) As the client relationship manager for the School District, Dolan consulted with Schectman on a regular basis about IBC's participation in various corporate partnership activities with the School District. (Schectman dep. at 59-61.) Dolan reminded Schectman of IBC's audit policy, specifically, that IBC had the right not to accept TH Services as auditor. (Schectman dep. at 49-50.) Schectman told Dolan that he was not aware of IBC's audit policy and asked her to send him

a copy of it, which Dolan did on March 4, 1997. (Schectman dep. at 50.)

According to Schectman, "it wasn't worth the aggravation of having to go through the process to get IBC approval. We could accomplish the same effort if we wanted to return to the way we used to do it by having our internal staff do it and that's at a fixed cost. So there was just no benefit to us." (Schectman dep. at 53.) Schectman testified that he never had any discussion with anyone from Blue Cross who indicated any basis, apart from TH Services being a contingent fee auditor, on which Blue Cross might object to TH Services performing the audit. (Schectman dep. at 58.)

Plaintiff contends that TH Services had established a prospective contractual relationship with the School District, and IBC's actions were intended to, and ultimately did, interfere with that relationship. Moreover, plaintiff argues that IBC was not privileged to interfere in that relationship, because (1) IBC's anti-contingent fee policy was a pretext to ensure that TH Services would not expose IBC's improper discount practices in Philadelphia, and (2) contingent fee audits are legitimate and promote accountability in healthcare organizations; thus, IBC's alleged concerns were unjustified.

III. DISCUSSION

Summary judgment is appropriate "if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law." F.R.C.P. 56(c); see also DeCesare v. Nat'l R.R. Passenger Corp., 1999 WL 972009, at *3 (E.D. Pa. 1999). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of any material fact, the moving party may satisfy this burden by providing evidence which indicates that the plaintiff is unable to satisfy an element of the cause of action as plead in the Complaint. See Koschoff v. Henderson, 1999 WL 907546, at *1-*2 (E.D. Pa. 1999); DeCasare, 1999 WL 972009, at *3. In response, the nonmoving party cannot rest on the pleadings but "must set forth specific facts showing that there is a genuine issue for trial." F.R.C.P. 56(e); see also DeCesare, 1999 WL 972009, at *3; Striklin v. Ferland, 1999 WL 961245, at *1 (E.D. Pa. 1999).

A. Tortious Interference with Prospective Contractual Relations (Counts I and III)

Under Pennsylvania law, there are five elements to a claim for interference with actual or prospective contractual relations: (1) the existence of a prospective contractual relation, (2) an intent on the part of defendants to harm plaintiff by interfering with that relation, (3) the absence of a

privilege or justification for the interference, (4) actual damages, and (5) for prospective contracts, a reasonable likelihood that the relationship would have occurred but for the interference of the defendant. See Brokerage Concepts, Inc. v. U.S. Healthcare, Inc., 140 F.3d 494, 530 (3d Cir. 1998) (citations omitted); TH Services Group, Inc. v. Independence Blue Cross, et al., 1999 WL 124408 at *3 (E.D. Pa.) (Gawthrop, J.) (citing Kachmar v. Sunguard Data Systems, Inc., 109 F.3d 173, 184 (3d Cir. 1997)).

1. Count I - PEBTF

In order to prevail on its claim for tortious interference, plaintiff must demonstrate that, in fact, a prospective contractual relationship existed between TH Services and the PEBTF.

"The Pennsylvania Supreme Court has defined a 'prospective contractual relation' as 'something less than a contractual right, something more than a mere hope.' In short, it is 'a reasonable probability' that contractual relations will be realized." U.S. Healthcare v. Blue Cross of Greater Philadelphia, 898 F.2d 914, 925 (3d. Cir. 1990) (quoting Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466, 471 (Pa. 1979)). The Pennsylvania Supreme Court has explained that "this is an objective standard which of course must be supplied by adequate

proof." Thompson, 412 A.2d at 471. In Thompson, appellant's expectation that a year-to-year lease would be renewed did not amount to a reasonable probability such that would constitute a prospective contractual relation. See id. at 471-72 (". . . the fact that the parties agreed to extend this year-to-year lease only until the specifically mentioned date. . . would provide no reasonable basis for either party to expect a perpetuation of the leasehold beyond that point . . . .").

Similarly, accepting as true all of plaintiff's factual contentions, it is nevertheless not reasonably probable for plaintiff to have expected an ongoing contractual relationship with the PEBTF. Nothing in its 1992 audit agreement with the PEBTF foreshadowed or contemplated future services by TH Services. It is undisputed that since the completion of the Coopers & Lybrand audit in March 1996, the PEBTF has not hired any auditors or issued any requests for outside services to audit any Blue Plan. Consequently, based on these undisputed facts alone plaintiff has not demonstrated that a prospective contractual relationship with the PEBTF with which defendants could have interfered. Thus, the first element of tortious interference cannot be satisfied.

Moreover, the evidence shows that the PEBTF expressed to TH Services dissatisfaction with its audit methodologies and quality of services. There was a dispute between them that required an

extensive arbitration proceeding and award. The plaintiff has not shown that there existed a relationship with the PEBTF after the arbitrator's award that was conducive to the establishment of a prospective contractual relationship.

Even if plaintiff could prove the existence of a prospective contractual relationship with the PEBTF, it has failed to demonstrate the second element of tortious interference, namely, that defendants intended to harm plaintiff by interfering with that relationship. To satisfy this element, plaintiff must demonstrate that defendants' conduct constitutes "purposeful interference without justification." Birl v. Philadelphia Elec. Co., 167 A.2d 472, 474 (Pa. 1960). Viewing the record in the light most favorable to it, plaintiff has failed to demonstrate that defendants' actions were without justification. Plaintiff has introduced no evidence to dispute defendants' justification for their non-contingent-fee audit policy, namely, to ensure that joint audits between defendants and their customers are conducted by a jointly chosen, independent auditor. (See MacGee Ver. ¶ 8.) Thus, this court must find that no reasonable jury could conclude that defendants' actions constituted an intent to harm plaintiff by interfering with a relationship with the PEBTF.

Since this court finds that plaintiff cannot satisfy either the first or second element of tortious interference, discussion of the remaining elements for such a claim is not required.

2. Count III - Coalition, Affiliation, Philadelphia School District

Count III of plaintiff's Complaint alleges that IBC tortiously interfered with prospective contractual relations between TH Services and the Coalition, the Affiliation, and the School District. In order to prevail, plaintiff must demonstrate that, in fact, a prospective contractual relationship existed between TH Services and the respective organizations, that defendant IBC intended to harm plaintiff by interfering with that relation, that there was absence of privilege or justification for the interference, that there were actual damages, and that there was a reasonable likelihood that the relationship would have occurred but for the inference.

Viewing the evidence in the light most favorable to plaintiff, the court finds that plaintiff can not establish the elements of tortious interference with respect to any of these customer organizations.

a. The Coalition

With respect to the Coalition, IBC has presented uncontradicted evidence, discussed supra, that the Master Agreement negotiated with the Coalition did not in any way obligate the Coalition's membership to use plaintiff's auditing services. Since neither the Coalition nor the Plumbers ever

provided assurances to plaintiff that a contract with any local Plumbers Union was reasonably probable, the court must find that a prospective contractual relationship did not exist.

Further, although plaintiff does not accept the stated reasons for the Plumbers' decision not to use TH Services, the documents and deposition testimony support nothing other than defendants' explanation, discussed supra, that the Plumbers local did not contract with TH Services because it regarded certain provisions of the proposed contingent fee arrangement as undermining their autonomy.

The IBC policy against accepting contingent fee auditors was in place three years prior to TH Services' approaching the Coalition. The Coalition was bound by that agreement with IBC, who had a right to inform or remind its customer of that provision. Under this undisputed evidence, the court must find that the only evidence put forth by plaintiff - a correspondence between IBC and Buckley that contained a copy of IBC's audit policy, but no mention of TH Services, cannot as a matter of law, support a claim that IBC's actions amounted to unjustified, purposeful interference with plaintiff's prospective contractual relations with members of the Coalition.

b. The Affiliation

TH Services has not established a reasonable likelihood or probability that a contractual relation would have developed between it and the Affiliation. Plaintiff has established only that the Affiliation provided a forum where TH Services could make a presentation to individual school districts. Further, as Owens' internal memorandum to Affiliation officers indicates, at the time of TH Services' proposal, the Affiliation was considering several different auditing options, including the possibility of using internal auditors. As such, plaintiff has proven only that it "[got] its foot in the door to deliver a sales pitch to its prospective clients." Robert Billet Promotions, Inc. v. IMI Cornelius, Inc., 1996 WL 195384, at *6 (E.D. Pa. 1996), rev'd in part, 107 F.3d 863 (3d Cir. 1997).

In Billet Promotions, plaintiff asserted that defendant had tortiously interfered with its prospective contractual relations, but could only show several prospective clients had requested that it make proposals. Id. In granting defendant's motion for summary judgment, the court found that, at most, plaintiff had "gotten its foot in the door to deliver a sales pitch to its prospective clients. There is no indication that these clients were reasonably probable to buy [plaintiff's] sales pitch and enter into a contract with [plaintiff]." Id. Similarly, here, TH Services has shown only that it made a single sales

presentation to the Affiliation, which is not enough to establish the existence of a prospective contractual relationship. (Wells Tr. at 65-67.)

Viewing the evidence in the light most favorable to TH Services, plaintiff still has not demonstrated that a relationship with an Affiliation member was "reasonably probable." Therefore, as a matter of law, no prospective contractual relationship existed between plaintiff and an Affiliation member.

In any event, IBC's policy against permitting contingent fee auditors to audit its affairs was in existence long before TH Services contracted with the Affiliation. It is undisputed that TH Services had proposed a contingent fee relationship with an affiliation member. IBC had a right to inform its customer of the existence of its policy. Hence, there could be no unlawful interference with a prospective contractual relationship.

c. The School District of Philadelphia

Viewing the evidence in a light most favorable to it, plaintiff can persuade a reasonable factfinder that TH Services possessed a prospective contractual relationship with the School District, and that IBC purposefully interfered with that relationship by informing the School District of its non-contingent-fee audit policy. The letter to the IBC sales manager

from Schectman, the executive director of financial services of the School District, informing IBC of the School District's decision to retain TH Services does amount to a reasonable probability of a contractual relationship. Further, the evidence supports plaintiff's allegation that IBC's hand-delivered letter to the School District, delivered in response to Schectman's correspondence and stating that IBC's audit policy prohibits contingent fee and non-mutually-agreeable auditors, constitutes an intent to interfere with that relationship.

However, plaintiff has not demonstrated that IBC had no privilege or justification for the communication. Thus, plaintiff cannot satisfy that element of tortious interference.

Privilege or justification exists "where the interfering party exercised its own rights or where the party has an equal or superior interest to the subject matter of the contract with which the party allegedly interfered." Nathanson v. Medical College of Pennsylvania, 1990 WL 31691, at *5 (E.D. Pa. 1990), aff'd in part, rev'd in part, 926 F.2d 1368 (3d Cir. 1991) (citations omitted). The third circuit accords "substantial deference to defendants whose conduct, despite its conflict with plaintiff's interests, protects an existing legitimate business concern." Windsor Securities v. Hartford Life Ins. Co., 986 F.2d 655, 665 (3d Cir. 1993). See also Green v. Interstate United Management Services Corp., 748 F.2d 827, 831 (3d Cir. 1984)

("When a defendant acts at least in part to protect some legitimate concern that conflicts with an interest of the plaintiff, a line must be drawn and the interests evaluated.").

To determine whether a defendant's business interests are legitimate, and its actions privileged, Pennsylvania courts are guided by the following factors derived from the Restatement (Second) of Torts § 767 (1979): (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference, and (g) the relations between the parties. See Windsor, 986 F.2d at 663 (citing Nathanson, 926 F.2d at 1388-89) (additional citations omitted). "The nature of a defendant's conduct is a chief factor in determining whether the conduct is improper or not." Restatement (Second) of Torts § 767 cmt. c.

In Windsor, an investment advisor and an investor brought an action against a mutual fund sponsor, alleging that the sponsor's imposition of a restriction on its investors' ability to effect transfers among fund subaccounts through third-party agents resulted in tortious interference with the investment advisor's contracts with individual investors. 986 F.2d at 665. The third

circuit held that the sponsor's imposition of restrictions did not result in tortious interference with the investment advisor's contracts. The court stated that it would accord "substantial deference" to a defendant whose conduct, notwithstanding a conflict with plaintiff's interest, protects an existing legitimate business concern. Id. Further, the court concluded that there was no evidence that the sponsor's conduct was wrongful "by any measure external to the interference itself." Id. at 664-65.

By the same token, IBC had a legitimate interest in regulating its existing relationship with the School District, which included prohibiting contingent fee audits. IBC contends that its audit policy is based on considerable evidence that contingent fee arrangements may lead to harmful incentives and/or divided loyalties. See, e.g., Marc J. Epstein & Wayne A. Label, Cleaning Up the Profession: Clients Take a Stand on Commissions & Contingency Fees, The National Public Accountant, March 1994, at 13. Further, many states do not allow public accountants to enter into contingent fee agreements. Id. (noting that Arkansas, California, Connecticut, Florida, Iowa, Nevada, New Mexico, Oregon, Rhode Island and Tennessee have enacted statutes prohibiting commissions and/or contingent fees). Although Pennsylvania law prohibits contingent fee audits only in areas where it has deemed them to be contrary to public interest, see

Suburban Cable TV Co., Inc. v. City of Chester, 685 A.2d 616, 619 (Pa. Commw. Ct. 1996); 63 P.S. § 457.11(a)(10) (1990) (prohibiting real estate appraisers from accepting appraisal assignment where the fee is contingent on the valuation reached), there is no legal impediment to a business adopting a policy not to permit contingency fee audits. Thus, the court must find that IBC's policy, which was in place as of 1993, years before this alleged relationship, was lawful and could be exercised in its interest.

TH Services argues that IBC's actions were not justified, because (1) IBC's anti-contingent fee policy was a pretext to ensure that TH Services would not expose IBC's improper discount practices in Philadelphia, and (2) contingent fee audits are legitimate and promote accountability in healthcare organizations.[15]

TH Services has not presented any evidence to show that IBC's stated reasons for its audit policy are pretextual. While IBC has consistently rejected it as a contingent fee auditor, pTH Services has not shown any instance of where it has presented

[15]Plaintiff also argues further that defendant was not privileged because IBC is an ERISA fiduciary with respect to the Plumbers and the School district and thus was obligated to submit to audits once they had been called for. However, while defendant may have been obligated to agree to an audit, plaintiff does not point to any provision under ERISA that requires defendant to submit to the services of a particular auditor, i.e., TH Services.

itself to a customer and to IBC as other than a contingent fee auditor, and been rejected. Therefore, plaintiff lacks the essential evidence to attack the anti-contingent-fee auditor policy as a pretext for discrimination against it as an auditor.

B. Tortious Interference with Existing Contractual Relations (Count II)

Under Pennsylvania law, there are four elements to a claim for interference with existing contractual relations: (1) the existence of present contractual relations, (2) an intent on the part of the defendants to harm the plaintiff by interfering with those relations, (3) the absence of a privilege or justification for the interference, and (4) actual damages. T.H. Services, 1999 WL 124408, at *4 (citing Mollinger v. Diversified Printing Corp., 1989 WL 115125, at *7 (E.D. Pa. 1989) (citations omitted)).

IBC argues that because TH Services did not have an actual or prospective relationship with the Coalition or any of its members with which IBC could have interfered, this court should grant summary judgment. In its capacity as a buying group for its health and welfare fund members, the Coalition negotiated and approved a Master Agreement with TH Services that created a template that Coalition members could use, at their discretion, if they chose to retain TH Services to conduct audits of their

BIC billings. Under the Master Agreement, discussed supra, Coalition members were never obligated to retain TH Services for their auditing needs. Thus, the Master Agreement did not constitute a present contractual relationship between TH Services and any prospective party.

C. Conspiracy to Interfere with Existing and Prospective Contractual Relations (Count IV)

Under Pennsylvania law, to establish a claim for civil conspiracy, the evidence must show that "two or more persons combined or agreed with the intent to do an unlawful act or to do an otherwise lawful act by unlawful means. Proof of malice, i.e., an intent to injure, is essential in proof of a conspiracy. This unlawful intent must be absent justification." Yeager's Fuel v. Penn. Power & Light, 953 F. Supp. 617, 668-69 (E.D. Pa. 1997). Since there is no evidence of an unlawful act by any defendant as pertains to Counts I, II, and III, the conspiracy count must fail as a matter law.

IV. CONCLUSION

For the foregoing reasons, plaintiff has failed to present evidence sufficient to create a genuine issue of material fact, and summary judgment is granted in favor of all defendants and against plaintiff on all four Counts.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TH SERVICES GROUP, INC., PLAINTIFF	:	CIVIL ACTION
v.	:	
INDEPENDENCE BLUE, et al., DEFENDANTS	:	NO. 98-CV-4835

JUDGMENT

AND NOW, this ___ day of January 2001, upon consideration of each Defendant's Motion for Summary Judgment, and the opposition thereto, for the reasons outlined in the attached memorandum, it is hereby ORDERED that each Defendant's motion is GRANTED. Judgment is ENTERED IN FAVOR of Defendants, Independence Blue Cross, Capital Blue Cross, Highmark, Inc., and Blue Cross of Northeastern Pennsylvania, and AGAINST the Plaintiff, TH Services.

BY THE COURT:

_____
JAMES T. GILES C.J.

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to